

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8102 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
NARESH GANPATBHAI MEDPARA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR ZUBIN F BHARDA for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/12/1999

ORAL JUDGEMENT

#. The petitioner was detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) by an order passed by Commissioner of Police, Rajkot City, Rajkot, dated January 20, 1999, in exercise of powers under Section 3(1) of the PASA Act.

#. The grounds of detention indicate that the

detaining authority considered the seven offences registered against the detenu for vehicular thefts. The authority also considered statements of two witnesses and arrived at a subjective satisfaction that the detenu was head strong person and his activities were detrimental to public order. The fear expressed and incidents cited by the two witnesses in respect of unregistered offences were also found to be correct and genuine by the detaining authority. The detaining authority, therefore, found that the detenu is a dangerous person as defined under the PASA Act. After considering the possibility of resorting to less drastic alternative remedy, the detaining authority concluded that it is not possible to resort to such remedies as it is necessary to prevent the detenu immediately from pursuing his illegal and anti-social activities and, therefore, the order of detention under PASA Act was passed.

#. The authority considered that the detenu has been arrested in the offences and he is in judicial custody. He is not released on bail but he is likely to secure bail and pursue his illegal and anti-social activities on being released on bail, which may endanger the public security and public order for the city of Rajkot.

#. In this petition under Article 226 of the Constitution, the petitioner has challenged the order of detention on various counts. One of the grounds taken in paragraph 7 is that the detenu was in judicial custody when the order of detention was passed. The detenu was apprehended on 1st January, 1999 and from that day till January 20, 1999, i.e. the date of passing of the impugned order of detention, the detenu had not preferred an application for bail and, therefore, the impugned order could not have been passed against the detenu for want of any indication that the detenu was to prefer a bail application.

#. Mr. Bharda, learned advocate appearing for the petitioner, has pressed the petition only on this ground and has relied on the decision of the Apex Court in the case of Abdul Razak Abdul Wahab Shaikh v. S.N. Sinha, Commissioner of Police, Ahmedabad, A.I.R. 1989 SC 2265. and submitted that the detaining authority has not considered that there was no possibility of the detenu being released on bail unless he tendered an application therefor and till that application is given, the possibility of the detenu being released on bail is non-existent and the order founded thereon would, therefore, be vitiated.

#. Mr. Joshi, learned Assistant Government Pleader has opposed this petition. He submitted that the detaining authority has considered the facts of the case, the documents sent to it by the sponsoring authority and, thereafter, having arrived at a subjective satisfaction that detention was the only remedy that can be resorted to, the order is passed. The petitioner is involved in as many as seven vehicular theft cases and, therefore, the petition may be dismissed.

#. The petition deserves to be allowed on the ground that is argued by Mr. Bharda. The grounds of detention clearly reveal that the detenu was in judicial custody when the order came to be passed. There appears to be nothing with the detaining authority to apprehend release of the detenu on bail at that point of time because no application for bail was preferred at that point of time, as is asserted by the petitioner in the petition and as is reflected in the grounds of detention itself. The authority, therefore, ought to have realised the fact that without an application for bail, there was no possibility of the detenu being released on bail and the ground of possibility of the detenu being released on bail and indulging in anti-social and illegal activities was, therefore, non-existent. The order, therefore, seems to have been passed by the detaining authority in mechanical and non-considerate manner. This view of the Court is based on the decision in the case of Abdul Razak Abdul Wahab Shaikh (supra).

7.1 The authority could have considered the possibility of resorting to a less drastic remedy in the nature of opposing the application for bail, which has also not been considered and, therefore, the order of detention impugned in this petition stands vitiated.

#. In view of the above discussion, the petition deserves to be allowed and is allowed. The order of detention dated 20th January, 1999 in respect of the petitioner-Naresh Ganpathbhai Medpara is hereby set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

gt